

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG 10 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

)

CC Docket No. 98-115

)

Telephone Number Portability

)

NSD File No. L-98-84

**COMMENTS OF BELL ATLANTIC MOBILE, INC.
ON INTERIM NANC REPORT**

BELL ATLANTIC MOBILE, INC.

By: John T. Scott, III
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 624-2500

Its Attorneys

Dated: August 10, 1998

No. of Copies rec'd
L-98-84

044

TABLE OF CONTENTS

| | |
|--|----|
| SUMMARY | 1 |
| THE NANC REPORT REVEALS NUMEROUS UNSOLVED PROBLEMS WITH WIRELESS NUMBER PORTABILITY | 3 |
| THE COMMISSION SHOULD SUSPEND THE COMPLIANCE DATE AND GRANT FORBEARANCE | 8 |
| CONCLUSION | 13 |

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|------------------------------|---|----------------------|
| In the Matter of |) | CC Docket No. 95-116 |
| |) | |
| Telephone Number Portability |) | NSD File No. L-98-84 |

**COMMENTS OF BELL ATLANTIC MOBILE, INC.
ON INTERIM NANC REPORT**

Bell Atlantic Mobile, Inc. (BAM) submits this response to the Commission's Public Notice seeking comments on the May 8, 1998, Report of the North American Numbering Council Local Number Portability Administration Working Group on Wireless-Wireline Integration (NANC Report).¹ The NANC Report is another confirmation that the Commission should suspend the deadline for wireless number portability and forbear from imposing this requirement on wireless carriers.

SUMMARY

The Commission's Rules delegate considerable responsibility to NANC for making recommendations on number portability implementation, and establish a

¹ Public Notice, "Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation Concerning Local Number Portability Administration, Wireline and Wireless Integration," DA 98-1290, released

specific procedure for adopting NANC's recommendations. The Commission sought to draw on NANC's expertise, and its broad membership representing all sectors of the telecommunications industry, to address the specific problems posed by wireless number portability. The May 1998 NANC Report is, however, merely an interim "progress report" on NANC's ongoing efforts to deal with those difficult problems. NANC states that no consensus has been reached on many issues and that further work, occupying the rest of 1998, is needed. The Public Notice states that the process for considering and adopting NANC recommendations will not begin until after NANC submits a final report. The Commission should thus take no action on the issues posed by this interim report.

What the Commission should do, and do now, is suspend the June 30, 1999, wireless number portability compliance deadline, and grant the pending requests for forbearance from this requirement. The record that has already been compiled in two separate proceedings shows that this deadline cannot be met, in part because of the unresolved problems that NANC itself has been wrestling with. NANC's Report supplies further evidence that the compliance deadline is infeasible and that there are still no solutions for some of the unique problems caused by attempting to impose number portability on wireless networks. The Commission cannot lawfully impose rules that the uncontradicted record shows cannot be met, particularly by the current arbitrary deadline.

THE NANC REPORT REVEALS NUMEROUS UNSOLVED PROBLEMS WITH WIRELESS NUMBER PORTABILITY.

In July 1996, the Commission adopted rules governing both wireline and wireless number portability.² Landline carriers were to implement portability in stages beginning in 1997. Cellular, broadband PCS and “covered” SMR providers were required to install upgrades to their networks by June 30, 1999, which would enable wireless subscribers to port their numbers to other carriers. *Id.* at ¶ 166, 47 CFR § 52.31(a). The Commission determined that NANC, as the independent federal advisory committee with broad expertise on numbering, and membership that includes representatives from all sectors of the telecommunications industry, should first address certain number portability issues. It thus directed NANC to make recommendations for number portability administration, standards and implementation. *Id.* at ¶ 195.

In May 1997, NANC submitted its recommendations, but they excluded wireless number portability.³ NANC stated that its work plan “was directed primarily to the wireline portion of the industry and did not fully address wireless concerns,” that the assumptions used in the number portability architecture plan

² Telephone Number Portability, First Report and Order, 11 FCC Rcd 8352 (1996).

³ North American Numbering Council, Local Number Portability Administration Selection Working Group Report, April 25, 1997.

“explicitly excluded wireless,” and that its task force on technical requirements “did not consider wireless concerns in depth.” Id. at § 3.1.

In August 1997, the Commission adopted most of NANC’s recommendations for landline portability.⁴ It found that NANC’s deferral of wireless portability was “reasonable” given the importance of moving ahead with landline portability. The Commission cautioned, however, that adoption of these initial recommendations “should not be viewed in any way as an indication that we believe our plan for implementing local number portability is complete,” and that difficulties remained for “incorporating CMRS providers into a long-term number portability solution.”

Id. at ¶ 90. It continued:

[W]e recognize that it will probably be necessary to modify and update the current local number portability standards and procedures in order to support wireless number portability. Thus, we direct the NANC to develop standards and procedures necessary to provide for CMRS provider participation in local number portability. We further direct the NANC to present its wireless recommendations to the Commission as soon as possible, but not later than nine months after the release of this Second Report and Order. CMRS providers will need clear guidelines as to how to query the Service Management System databases to determine proper call routing, as well as how to implement wireless number portability. The NANC must also consider other issues of concern to CMRS providers, such as how to account for differences between service area boundaries for wireline versus wireless services and how to implement number portability in a roaming environment.

⁴ Telephone Number Portability, Second Report and Order, 12 FCC Rcd 12281 (1997).

Id. at ¶ 91. The Commission also adopted formal procedures, codified at 47 CFR § 52.26, for public comment, review and adoption of any future NANC recommendations on number portability. Id. at ¶ 130.

Although the Commission had directed that NANC complete its work “as soon as possible but not later than nine months,” NANC struggled with the many issues that the Commission had asked it to address. It did not submit a report until the full nine months had expired, and this is only an interim report which notes that analysis will be continuing on many issues through the end of 1998 – eight months longer. NANC’s work will thus take nearly double the time the Commission had expected. Despite NANC’s diligent and concerted efforts, intractable problems remain in developing procedures for wireless number portability. The Commission had recognized that it needed timely and final recommendations from NANC if the June 1999 deadline was to be met. But the NANC Report does not provide the “clear guidelines” that the Commission said were needed. Instead, NANC admits that it was unable to achieve consensus on many issues. For example:

-- NANC was unable to resolve the problem that results from the disparity between wireline carriers’ local calling areas and wireless carriers’ generally larger service areas, a problem on which the Commission had asked for a recommendation. Second Report and Order at ¶ 91. NANC reported that “differences exist between the local serving areas of wireless and wireline carriers,” resulting in “disparity” among carriers and “making it impossible for some wireless subscribers to port to

wireline carriers.” NANC reported that “consensus was not reached” on a solution to this problem. NANC Report at §§ 3.1.1., 3.1.3, 7.2.3 (emphasis added).

-- NANC did not submit specific recommendations as to roaming issues, although the Commission had asked for its input on “how to implement number portability in a roaming environment.” Second Report and Order at ¶ 91. Instead it merely noted the problem, as well as the impact on roaming traffic in Canada and other member countries of the North American Numbering Plan – an international issue that the Commission had not resolved in requiring number portability in the roaming context. NANC Report at §§ 4.1, 4.1.6, 7.2.2.

-- NANC reported that more work was needed on wireless-wireline interface issues and agreements on porting intervals. A task force “will work during the remainder of 1998 to review systems and work processes in order to determine the reduction in porting interval from wireline to wireless carriers . . . with the final recommendation presented to NANC no later than December 31, 1998.” Id. at § 3.3.3.3. In addition, “the wireless industry will complete a feasibility study to replace the LSR process for wireless to wireless porting.” Id. at § 7.1.1. The need for more work and the controversy over porting intervals⁵ underscores the infeasibility of the current wireless portability obligations.

⁵ One member of the task force strongly objected to NANC’s treatment of the porting intervals issue, and argued that NANC had altered a task force report without approval or discussion by task force members. BellSouth Minority Opinion to the Wireless/Wireline Integration Task Report on Number Portability, attached to NANC Report.

-- NANC did not reach any of the particular problems and complexities that will be faced by wireless resellers: "This report does not consider LNP impacts on resellers. Analysis of the impacts will be studied during the last half of 1998." Id. at § 7.2.1.

-- Nor did NANC resolve the problems number portability creates for Short Message Service, but instead deferred to future standard-setting efforts of indeterminate duration: "No recommendation is offered herein, rather it is expected the appropriate experts in the ANSI accredited standards groups will define the appropriate course of action." Id. at § 4.4.3.

The Public Notice implicitly acknowledges that the NANC Report does not provide the recommendations that the Commission had said were needed to implement wireless number portability. It states that NANC will instead continue its work and will submit recommendations by December 31, 1998. "Upon receipt of the final report, the Commission's procedures, as set forth in ¶ 130 of the Second Report and Order concerning the Bureau's adoption, modification or rejection of a NANC recommendation, will become operative." The Public Notice indicates that the Commission will take no action until after a final report is submitted.

This is the proper course. Given the interim nature of the NANC Report, the Commission has no basis to act at this time. Any action would be premature. The Commission properly referred wireless portability issues to the organization with the expertise and industry-wide membership to address them. Once NANC submits actual recommendations, public comment must then be sought. 47 CFR § 52.26.

Only after that process is completed, and based on the resulting record, may NANC's recommendations be adopted.

THE COMMISSION SHOULD SUSPEND THE COMPLIANCE DATE AND GRANT FORBEARANCE.

When it adopted the June 30, 1999 deadline for wireless carriers to provide wireless number portability, 47 CFR § 52.31(a), the Commission had no record basis showing that this deadline could be met. Rather, the Commission chose it because it followed the end of the staged implementation of landline number portability.⁶ The Commission did acknowledge that, unlike landline portability technology, wireless portability solutions did not yet exist, and that there were unique wireless problems (such as roaming) that had to be addressed. Given that "additional technical issues may arise as the industry begins to focus on provision of portability by CMRS carriers," the Commission authorized the Wireless Bureau to extend the deadline by up to nine months beyond June 30, 1999. First Report and Order at ¶ 167, 47 CFR § 52.31(c). A year later, the Commission directed NANC to recommend solutions to wireless number portability issues "as soon as possible and in any event within nine months" (by May 1998). It recognized that manufacturers

⁶ BAM has challenged the First Report and Order as arbitrary and capricious for this reason, and has also presented other challenges to the legality of that order to the Tenth Circuit. BAM's appeal has been supported by intervenors AirTouch, GTE, SBC, and CTIA. Bell Atlantic NYNEX Mobile v. FCC, No. 97-9551 (10th Cir.) (appeal pending).

and wireless carriers would need considerable time after those recommendations were adopted, and standards were set, to comply.

NANC's interim report makes clear that the June 1999 deadline cannot be met. It also shows that the adoption of wireless number portability simultaneously with landline portability was ill-advised, because that action failed to recognize the unique problems caused by attempting to impose portability solutions on wireless systems. NANC has struggled with trying to find answers to questions that should have been solved before any wireless number portability obligation was imposed.

The same issues that the Commission acknowledged NANC should address remain under consideration. The report is a catalog of still to be resolved matters (examples of which are discussed at pages 5-7 of these Comments, infra). The recent Public Notice notes that it will not be until the end of December 1998 that the final NANC report will be produced – nearly double the timetable the Commission had counted on. Even assuming that this extended date is met,⁷ after the final report is submitted the Commission must still solicit public comment on the report in early 1999, and then review, consider and act on the recommendations, as 47 CFR § 52.26 requires. By that time, there will be at most only a few months (if any time at all) before the current deadline expires, far too little time to manufacture, install, and test the wireless portability solutions.

⁷ NANC's transmittal of the NANC Report stated that three NANC members voted not to accept the report, based on concerns that the work on wireless-wireline integration could not be completed by the end of 1998.

The problems NANC has encountered and its postponement of final recommendations on wireless number portability echo the record developed in two other Commission proceedings, both of which concern changes to the June 1999 compliance date. In November 1997, CTIA petitioned the Wireless Bureau to exercise its delegated authority under 47 CFR § 52.31(c) to extend the deadline by nine months. In December 1997, CTIA petitioned the Commission to forbear pursuant to Section 10 of the Communications Act from enforcing the wireless number portability obligations until the completion of the five-year buildout period for PCS systems. The Commission sought comment on both CTIA requests.⁸

The resulting record contains detailed information demonstrating that the June 1999 compliance date cannot be met, and undermines the Commission's assumptions as to the benefits of wireless number portability at all. Parties filing comments in early 1998 on CTIA's petitions identified unresolved issues as to roaming, wireless-wireline carrier porting coordination, and the lack of industry-wide technical standards, and showed that the deadline must be extended. They assumed that NANC's recommendations for implementing wireless number portability would be completed by May 1998, but pointed out that, even after that

⁸ Public Notice, "Wireless Telecommunications Bureau Seeks Comment on CTIA Petition for Waiver to Extend the Implementation Deadlines of Wireless Number Portability," DA 97-2579, released December 9, 1997; Public Notice, "Wireless Telecommunications Bureau Seeks Comment on CTIA Petition Requesting Forbearance from CMRS Number Portability Requirements," DA 98-111, released January 22, 1998.

step and the adoption of industry-wide standards, there would not be time to comply by June 1999. Parties explained how the design, production, testing and installation of necessary software and other upgrades could take up to two years to complete.⁹ Now, with a final report deferred until the end of 1998, the infeasibility of the June 1999 deadline is even clearer.

New wireless entrants – the very parties that the Commission had thought would benefit from wireless number portability – now oppose its current implementation.¹⁰ They stated that, based on their own actual market experience, wireless portability will not only fail to help them compete, but will actually impair competition, and that it will particularly burden small carriers. They advised the

⁹ E.g., AT&T Wireless, Inc. Comments, filed January 9, 1998, at 1 (“[B]ecause of technical problems unique to the wireless industry, wireless carriers will not be able to meet the Commission’s June 30, 1999 deadline”); Sprint Spectrum, L.P. Comments at 1-3; 360 Degree Communications Comments at 1-3; Primeco Communications, L.P. Comments at 2; Century Cellunet Reply Comments at 2-3; GTE Reply Comments at 4-6; AirTouch Communications Reply Comments at 3 (“It is now known that the CMRS industry cannot meet the current June 30, 1999 implementation date”).

¹⁰ The Commission’s 1996 decision imposing wireless number portability specifically relied on the comments of Primeco, a new PCS entrant, which had advocated such a requirement. Primeco now, however, opposes the rule: “Primeco’s assumptions concerning the value of WNP have proven erroneous. . . . The Commission’s original public interest justifications for WNP are largely irrelevant.” Primeco Comments, filed February 23, 1998, at i-ii. The FCC had also relied on the support of PCIA and Pacific Bell Mobile Services for wireless number portability in adopting the rules. But both those parties now oppose imposition of the rule as scheduled, and express concern that being forced to deploy wireless number portability capability will impede rather than help PCS. See PCIA Comments and Southwestern Bell Mobile Systems-Pacific Bell Mobile Services Comments, filed February 23, 1998, both of which support the CTIA forbearance petition.

Commission that the requirement would divert scarce resources away from financing and constructing their competitive wireless networks.¹¹ The record in response to the CTIA petitions thus undermines not only the compliance date but also the rationale for these rules.¹²

The NANC Report confirms the key points of the CTIA petitions and the record on those petitions – that the June 30, 1999 compliance deadline for wireless number portability cannot be met, and that the Commission should forbear from imposing that unnecessary and costly regulatory burden at this time. It confirms that there remain serious issues, such as the “impossibility” for some wireless subscribers to port their numbers to landline carriers. NANC Report at § 3.1.1. Given the many issues that remain to be resolved, the proper course is to suspend

¹¹ E.g., Rural Telecommunications Group Comments, filed February 23, 1998 at 3 (imposing requirement “would delay, and possibly halt, the progress these entities are making in the delivery of new services to rural areas”); Primeco Communications, L.P. Comments at 15 (failure to forbear “will hinder new PCS entrants’ ability to expand coverage to compete with incumbent cellular providers”); Sprint Spectrum L.P. Comments at 3 (requiring wireless portability “impedes buildout, aggressive marketing and price competition”). See Reply Comments of Bell Atlantic Mobile, filed March 10, 1998.

¹² Federal courts have held that an agency cannot continue to adhere to rules when the original assumptions for those rules are no longer valid or have been overtaken by new facts. Geller v. FCC, 610 F.2d 973 (D.C. Cir. 1979) (reversing Commission for maintaining cable television rules after the factual premise for the rules had disappeared); Meredith v. FCC, 809 F.2d 863 (D.C. Cir. 1987) (reversing Commission where its findings in a later proceeding “largely undermined the legitimacy of its own rule.”); Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992) (reversing Commission order; “it is settled law that an agency may be forced to reexamine its approach if a significant factual predicate of a prior decision . . . has been removed.”).

the deadline and grant CTIA's forbearance request. These problems, and the position of new entrants and others that wireless number portability would force carriers to incur enormous expense without material benefits for the foreseeable future, require the Commission to reexamine the merits of imposing wireless number portability obligations altogether.

CONCLUSION

The NANC Report confirms the record already before the Commission as to the need to suspend the current deadline for wireless carriers to implement wireless number portability and to grant forbearance from this requirement. BAM urges the Commission to take those actions promptly.

Respectfully submitted,

BELL ATLANTIC MOBILE, INC.

By: John T. Scott III
John T. Scott, III
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004
(202) 624-2500

Its Attorneys

Dated: August 10, 1998